

amo

•REPORT•

REPORT SERIES 1987

87-1

**A PROPOSED MODEL OF
COLLECTIVE BARGAINING AND
REQUIRED AMENDMENTS FOR
THE FIRE DEPARTMENTS ACT**

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
JANUARY 1987

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

- * County and Regional Section
- * Large Urban Section
- * Northern Ontario Section (FONOM/NOMA)
- * Rural (ROMA) Section
- * Organization of Small Urban Municipalities Section

Association Affiliates:

- * Association of Municipal Clerks and Treasurers of Ontario
- * Association of Municipal Tax Collectors of Ontario
- * Municipal Engineers Association
- * Ontario Municipal Administrators Association
- * Ontario Municipal Personnel Association
- * Ontario Municipal Social Services Association
- * Society of Directors of Municipal Recreation of Ontario
- * Urban Finance Officers Association of Ontario

To the Municipal Clerk:

Please circulate this Report to the members of council and to the staff of your municipality. Additional copies are available at \$10.00 each from the Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario M5J 1V6

TABLE OF CONTENTS

	Page
INTRODUCTION	1
SUMMARY	
Part I: Proposed Model of Collective Bargaining for the Fire Departments Act	2
Part II: Required Legislative Amendments for the Effective Administration of Fire Services	8
PART I: A PROPOSED MODEL OF COLLECTIVE BARGAINING FOR THE FIRE DEPARTMENTS ACT	10
General Intent	10
Clause-by-Clause Rationale of AMO Model Legislation	11
Definitions	11
Notice to Bargain	12
Fact Finding	13
Mediation	16
Arbitration	17
PART II: REQUIRED LEGISLATIVE AMENDMENTS FOR THE EFFECTIVE ADMINISTRATION OF FIRE SERVICES	24
APPENDIX A: A BRIEF OUTLINE OF COMMON ELEMENTS FOUND IN BARGAINING LEGISLATION IN ONTARIO	28
APPENDIX B: EXPERIENCE WITH FACT FINDING BY THE ONTARIO EDUCATION RELATIONS COMMISSION	38

A PROPOSED MODEL OF COLLECTIVE BARGAINING AND REQUIRED AMENDMENTS FOR THE FIRE DEPARTMENTS ACT

INTRODUCTION

The Association of Municipalities of Ontario continues to maintain its commitment to making recommendations to the government that will improve municipal services, particularly as they may relate to police and fire services.

An important aspect to providing effective services is the promotion of harmonious labour relations between employer and employees. To this end, it has been of long-standing concern to AMO that the current model for collective bargaining in the Fire Departments Act does not promote such relations and may in fact inhibit them. At any given time, the thrust of the existing model is to weigh the process more heavily in favour of one party and detract the parties from obtaining mutually acceptable and voluntary settlements.

AMO views the role of effective collective bargaining legislation as being that which provides both parties with a constructive and neutral framework within which differences can be resolved by the parties to their mutual satisfaction. As well, AMO believes that more viable alternatives to the present model exist which better keep with the spirit of developing effective labour relations. To this end, the Association is pleased to present to the government a model of collective bargaining that it believes best serves this purpose.

Another important aspect of effective municipal services is the degree to which the legislation affords the employer flexibility in administration. Given the high degree of dependence for police and fire services by the public and the implications for public health and safety, it remains that the delivery of these services must be the best possible and legislation should not unnecessarily constrain the employer in its administrative functions. In this regard, AMO has also made recommendations in this report for legislative amendments that would ensure a more effective administration of fire services.

SUMMARY

PART I: PROPOSED MODEL OF COLLECTIVE BARGAINING FOR THE FIRE DEPARTMENT ACT

Definitions

"association" means an association or trade union of which not less than 50 percent of the employees are members or, where there is no such association or trade union, a majority of the employees.

"employer" means the council of the municipality that maintains a fire department.

"party" means the council of a municipality or their designated representatives, on the one hand, and a bargaining committee of full-time firefighters duly established under this Act excluding senior officers, on the other hand, and "parties" means the two of them.

"Minister" means the Solicitor General.

Notice to Bargain

5. (1) Where no collective agreement exists or at any time after ninety days before the date of expiry of a collective agreement or within such further period as the parties may agree upon, a party may give the other written notice of its desire to bargain with a view to making a collective agreement covering terms and conditions of employment of the employees and the parties shall meet within sixty days or within such further period as the parties may agree upon from the date such notice was given and bargain in good faith and make every reasonable effort to make a collective agreement.

Fact Finding

- (1) Where bargaining has taken place in accordance with subsection 5(1) and,
 - i. either party has submitted a written notice to the Minister that an impasse has been reached during negotiations, or,

- ii. the Minister is of the opinion that an impasse has been reached in negotiations,

the Minister shall appoint a person as a fact finder during negotiations to make or renew an agreement.

- (2) Where the Minister appoints a fact finder, the Minister shall give written notice to each of the parties and the name and address of the fact finder.

- (3) a. Within seven days of the receipt of notice from the Minister of the appointment of a fact finder, each party shall give written notice to the fact finder and to the other party setting out all matters that the parties have agreed upon for inclusion in an agreement and all matters remaining in dispute between the parties.

- b. Where a party fails to comply with subsection (a), the fact finder may make a determination of matters mentioned in subsection (1) and may then proceed pursuant to this part.

- (4) a. A fact finder shall confer with the parties and inquire into, ascertain and make a report setting out the matters agreed upon by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

- b. In inquiring into, ascertaining the matters remaining in dispute between the parties, and making a report, a fact finder shall inquire into and may consider any matter the fact finder considers to be relevant to the making or renewal of a collective agreement including, without limiting the foregoing,

- i. the conditions of employment of other municipal employees within the same municipality,
- ii. the conditions of employment within the fire-fighter sector in Ontario,
- iii. the conditions of employment outside the fire-fighter sector in Ontario,

- iv. the effect of geographic and other local factors on the terms and conditions of employment,
 - v. the cost to the taxpayers of the municipality of the proposal of either party,
 - vi. the interests and welfare of the public.
- c. The report of a fact finder may recommend terms of settlement of the matters remaining in dispute between the parties.
- (5) A fact finder shall determine his/her own procedure under guidelines established by the Minister and, where the fact finder requests information from a party, the party shall provide the fact finder with full and complete information.
- (6) The fact finder shall submit his/her report to the Minister within thirty days after the date of his/her appointment or within such longer period as the Minister, with the agreement of the parties, may direct and the Minister shall forthwith give a copy of the report to each of the parties.
- (7) The report of the fact finder is not binding upon the parties but is made for the advice and guidance of the parties and, upon receipt of the report, the parties shall endeavour, in good faith, to make an agreement or renew the agreement, as the case may be.

Mediation

- (1) Where the Minister has given a copy of the report of the fact finder to each party and the parties have not made or renewed an agreement, as the case may be, the Minister may appoint a mediator if,
- a. either party has requested that the Minister appoint a mediator, or
 - b. the Minister is of the opinion that the parties may benefit from the appointment of a mediator.

Arbitration

(1) Where thirty days has elapsed from the day each party was given a copy of the fact finder's report and the parties have not made or renewed an agreement, as the case may be, and

- i. the Minister has not been requested to appoint a mediator, or
- ii. the Minister has informed the parties that he does not intend to appoint a mediator, or
- iii. a mediator has been appointed and the mediator is of the opinion that the parties proceed to final and binding arbitration,

a board of arbitration of three members shall be constituted for the purpose of making an award that is binding upon the parties and the Minister shall inform the parties that a board of arbitration is to be constituted.

(2) Each party shall appoint one member and the two members so appointed shall appoint a third member who shall be the chairman.

(3) Where within thirty days from the day the Minister informed the parties that a board of arbitration is to be constituted, either party fails to appoint an able and willing member to the board of arbitration, the Minister may, upon the written request of the other party, appoint a member.

(4) a. Where five days has elapsed from the day the second member was appointed and the two members of the board of arbitration appointed by or on behalf of the parties have failed to agree upon a third member who is able and willing to act, the Minister may, upon written notice of such failure given to him by either of the two members or either party, appoint the third member.

- b. Notwithstanding subsection (a), the Minister shall appoint a person to serve as the third member of a board of arbitration from amongst those persons who have not been considered by the other two members of the board of arbitration.
- (5) Each party shall identify to the other and submit to a board of arbitration not more than three issues in dispute between the parties, or such other number of issues to which the parties may have mutually agreed, and a board of arbitration shall, in making an award, not render a decision on any issue not submitted to it by either party.
 - (6) Where, on the first day of proceedings, more than three issues in dispute between the parties, or more than the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, have been submitted by a party to a board of arbitration for its consideration, the board of arbitration shall require that party to submit to it only three issues or only the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, for consideration by the board of arbitration prior to the completion of the first day of proceedings.
 - (7) Where an issue in dispute between the parties is not submitted by a party to a board of arbitration for the board's consideration and the parties cannot reach an agreement on the terms of resolution of such issue, the existing provision of the agreement to which the issue refers shall prevail during the term of the agreement and where no provision exists in the collective agreement to which the issue refers, such matter shall not be included in an agreement and no board of arbitration constituted under this Part shall render an award on such matter.
 - (8) (1) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,
 - a. the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,

- b. general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,
- c. the interest and welfare of the public,
- d. the terms and conditions of employment in other municipalities,
- e. the needs of the council of the municipality for qualified employees,
- f. the terms and conditions of employment in other occupations in the public and private sectors as the board of arbitration may consider relevant, and,
- g. the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of services rendered.

(2) Notwithstanding subsection (1), in the conduct of proceedings before a board of arbitration a party shall not submit into evidence the report of a fact finder and in rendering a decision a board of arbitration shall not consider the report of a fact finder.

(9) The Minister shall maintain a current list of qualified persons who may serve as a third member on a board of arbitration and from which the two members appointed to a board of arbitration by or on the behalf of the parties may select.

- (10) a. The Minister shall maintain a schedule of fees specifying the fee that those persons duly appointed to a board of arbitration as a third member may charge.
- b. Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third member equally.

SUMMARY

**PART II: REQUIRED LEGISLATIVE AMENDMENTS FOR THE EFFECTIVE
ADMINISTRATION OF FIRE SERVICES**

"deputy chief" means a person or persons appointed by the employer to assist in the control and administration of the fire department and to act in the place of the fire chief in his absence or in the case of a vacancy in the office.

"employer" means the council of a municipality that maintains a fire department.

"full-time firefighter" means a person employed in a fire department on a full-time salaried basis and assigned primarily to fire suppression or fire prevention duties or both and includes a senior officer and an officer.

"senior officer" means a fire chief, deputy chief, assistant deputy chief or other full-time firefighter who, in the opinion of the Minister, exercises managerial functions or is employed in a confidential capacity relating to labour relations.

- (1) a full-time firefighter shall not be compelled to work during the hours off duty but may be recalled to duty where services are required in connection with a fire, flood or other emergency to which, in the opinion of the fire chief, a proper response cannot be made with the full-time firefighters on duty in a manner that is consistent with the maintenance of ongoing fire suppression in the municipality.
- (2) (a) A full-time firefighter shall not be discharged from his employment without being given at least seven days notice in writing of the proposed discharge and the reasons therefor.
- (b) A full-time firefighter who receives a notice under subsection (a) may, before the expiry of the seven days, require the employer to hold a hearing by delivering a notice in writing to that effect to the clerk of the municipality and the discharge shall not take effect before the employer holds the hearing and gives its final decision.

(c) Where a full-time firefighter elects to require a hearing under subsection (b), any grievance or arbitration procedure established by a collective agreement or this Act does not apply.

(3) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,

(a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions, and,

(b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal,

and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of a board of arbitration.

PART I: A PROPOSED MODEL OF COLLECTIVE BARGAINING FOR THE FIRE DEPARTMENTS ACT

GENERAL INTENT

Once notice to bargain has been given by a party, a message is conveyed that differences exist between the parties and a settlement is desired. In the first instance of bargaining, the parties attempt to reach a settlement by engaging in compromise activity since a compromise settlement will not only be perceived as equitable but will also be acceptable to the parties. AMO believes that this behavioural effect is important since it can have positive implications in furthering the relationship of the parties during the term of the collective agreement and over subsequent rounds of negotiation.

However, AMO realizes that the parties are not always able to reach a compromise settlement on their own. Studies on impasse situations reveal that there are four reasons why an impasse can occur. These are:

- a. the potential terms of settlement do not overlap;
- b. there is an overlap of settlement terms but because of methods used by the parties, no overlap now exists;
- c. there are several mutually acceptable outcomes but the parties have been unable to select one; or
- d. there is a lack of communication between the parties and/or a lack of information for assessing party positions.

Additionally, the cause of impasses may be rooted in the type of issue over which the parties are bargaining - namely issues of principle versus those requiring a redistribution of resources.

Issues based on principle are seldom resolved even with intervention since this would require undertaking the difficult task of altering the values and beliefs of the parties. In fact, current arbitration awards in various sectors show that arbitrators are generally unwilling to rule on such matters, referring them instead back to the parties for resolution. Resolving impasses over a redistribution of resources is not as complex since this exercise requires an assessment of costs versus benefits of positions taken - an exercise that utilizes more concrete and tangible evidence.

This brief discussion on the nature of settlements and the causes of impasse is important since the legal framework provided to the parties for the conduct of bargaining must not only assist them in attaining a settlement, but also do it in such a way that the end result is acceptable to the parties if a positive relationship between the parties is to be promoted.

AMO also notes that, except in instances where the bargaining of certain issues is regulated by legislation in order to preserve the rights of the parties or of the public, the primary purpose of bargaining legislation in Ontario is to provide the parties with a framework that is equitable to both parties for the resolution of impasses. In Appendix A to this report, AMO has compared the frameworks of the bargaining process currently found in the Ontario Labour Relations Act, the Crown Employees Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act, the School Boards and Teachers Collective Negotiations Act and the Police Act. For comparison, the framework of the Fire Departments Act has also been included.

Based on a comparison of the bargaining frameworks of other pieces of legislation in Ontario, AMO believes that the model legislation for the Fire Departments Act outlined in this report keeps in step with generally accepted principles of bargaining and impasse procedures found in these Acts in Ontario. While the AMO model does not contain all of the details found in other Acts, the overall intent is to sketch a model of bargaining that is more equitable to the parties and that promotes a process where the probability of a compromise settlement is greatly augmented.

CLAUSE-BY-CLAUSE RATIONALE OF AMO MODEL LEGISLATION

Definitions

"association" means an association or trade union of which not less than 50 percent of the employees are members or, where there is no such association or trade union, a majority of the employees.

"employer" means the council of the municipality that maintains a fire department.

"party" means the council of a municipality or their designated representatives, on the one hand, and a bargaining committee of full-time firefighters duly established under this Act excluding senior officers, on the other hand, and **"parties"** means the two of them.

"Minister" means the Solicitor General.

Rationale

These definitions would serve to clarify the terminology used in the Act where reference is made to the parties that bargain and the authority that the Ministry of the Solicitor General may exercise in regulating impasse situations.

The definition of "party" makes clear that the council of a municipality may assign the actual task of bargaining to designated representatives. An expanded bargaining model should make some global reference for clarification.

Although subsection 5(4) now states that the firefighter bargaining committee holds meetings with the council of the municipality "or any committee thereof", this restricts municipalities to committees of municipal council that may not have the required expertise to conduct negotiations. Replacing "or any committee thereof" with "or designated representatives" would ensure a balance of advisors between the parties.

Additionally, this definition refers to a bargaining committee of full-time firefighters duly established under this Act. The Act should stipulate that senior officers (see Part II of this report for a recommended definition of "senior officers") should not form part of this committee since, as senior officers, they would be acting in a managerial or in a confidential capacity with respect to labour relations.

Similar language can be found in the Crown Employees Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act and the School Boards and Teachers Collective Negotiations Act.

Notice to Bargain

5. (1) Where no collective agreement exists or at any time after ninety days before the date of expiry of a collective agreement or within such further period as the parties may agree upon, a party may give the other written notice of its desire to bargain with a view to making a collective agreement covering terms and conditions of employment of the employees and the parties shall meet within sixty days or within such further period as the parties may agree upon from the date such notice was given and bargain in good faith and make every reasonable effort to make a collective agreement.

Rationale

AMO recommends that language similar to this be used in the Act. At the present time, the language with respect to notice implies that good faith bargaining must take place only by the council of the municipality. The language proposed is found in other bargaining Acts that require good faith bargaining be undertaken by both parties.

Fact Finding

In the public sector of Canadian jurisdictions, the most widely used form of non-binding intervention is mediation (conciliation is the same process). However, there exists another form of non-binding intervention referred to as "fact finding", legislated federally, via conciliation boards, in the federal Labour Code and the Public Service Staff Relations Act and legislated specifically under the School Boards and Teachers Collective Negotiations Act in Ontario. Although fact finding has enjoyed only a brief history in Canada, its use is more prevalent in the United States where more than half of the states have legislated it. A majority of these states use fact finding in conjunction with some other form of impasse procedure rather than exclusively.

Briefly, the process lies between mediation and arbitration. Resembling arbitration, the parties each make a submission on the outstanding issues to a government appointed fact finder. The fact finder then presents each party with a report on his/her findings that may include well-reasoned recommendations for the terms of settlement. However, unlike arbitration, the recommendations of a fact finder are not binding upon the parties.

Experience with the process by the Education Relations Commission (the regulatory body established by the Ministry of Education to oversee collective bargaining in the Ontario teacher sector) shows positive experience with the process. Appendix B outlines some of the recent experience with fact finding by the Commission.

AMO recommends that serious consideration be given to this form of non-binding intervention as a means of assistance, information and guidance if the parties have reached an impasse.

AMO's model for fact finding is as follows:

- (1) Where bargaining has taken place in accordance with subsection 5(1) and,

- i. either party has submitted a written notice to the Minister that an impasse has been reached during negotiations, or
- ii. the Minister is of the opinion that an impasse has been reached in negotiations,

the Minister shall appoint a person as a fact finder during negotiations to make or renew an agreement.

(2) Where the Minister appoints a fact finder, the Minister shall give written notice to each of the parties and the name and address of the fact finder.

(3) a. Within seven days of the receipt of notice from the Minister of the appointment of a fact finder, each party shall give written notice to the fact finder and to the other party setting out all matters that the parties have agreed upon for inclusion in an agreement and all matters remaining in dispute between the parties.

b. Where a party fails to comply with subsection (a), the fact finder may make a determination of matters mentioned in subsection (1) and may then proceed pursuant to this part.

(4) a. A fact finder shall confer with the parties and inquire into, ascertain and make a report setting out the matters agreed upon by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

b. In inquiring into, ascertaining the matters remaining in dispute between the parties, and making a report, a fact finder shall inquire into and may consider any matter the fact finder considers to be relevant to the making or renewal of a collective agreement including, without limiting the foregoing,

- i. the conditions of employment of other municipal employees within the same municipality,
- ii. the conditions of employment within the fire-fighter sector in Ontario,

- iii. the conditions of employment outside the fire-fighter sector in Ontario,
 - iv. the effect of geographic and other local factors on the terms and conditions of employment,
 - v. the cost to the taxpayers of the municipality of the proposal of either party,
 - vi. the interests and welfare of the public.
- c. The report of a fact finder may recommend terms of settlement of the matters remaining in dispute between the parties.
- (5) A fact finder shall determine his/her own procedure under guidelines established by the Minister and, where the fact finder requests information from a party, the party shall provide the fact finder with full and complete information.
- (6) The fact finder shall submit his/her report to the Minister within thirty days after the date of his/her appointment or within such longer period as the Minister, with the agreement of the parties, may direct and the Minister shall forthwith give a copy of the report to each of the parties.
- (7) The report of the fact finder is not binding upon the parties but is made for the advice and guidance of the parties and upon receipt of the report the parties shall endeavour, in good faith, to make an agreement or renew the agreement, as the case may be.

Rationale

Language such as this would make the process mandatory but would permit either party to access fact finding where an impasse is believed to be reached.

While fact finding can assist the parties to form an acceptable and voluntary settlement, should it be unable to do so, the process can at least narrow the range of difference between the parties.

The report of the fact finder can provide the parties with the neutral data that they may require in order to re-assess positions. In essence, it can aid by focusing and facilitating communications. An important feature of the fact finder's report is the recommendations it provides since these can give the parties alternative solutions for settlements that they may not have previously considered. The Education Relations Commission has found that, while settlements after fact finding do not exactly match the recommendations of a fact finder, the final terms do closely approximate them. Criteria established for the fact finder would ensure that reports and recommendations are meaningful in order that the parties may be educated on their own position and on those of the opposing party.

As well, with this type of procedure, the parties would be granted time to study the report of the fact finder and return to the bargaining table in order to arrive at a mutually acceptable settlement.

Mediation

- (1) Where the Minister has given a copy of the report of the fact finder to each party and the parties have not made or renewed an agreement, as the case may be, the Minister may appoint a mediator if,
 - a. either party has requested that the Minister appoint a mediator, or
 - b. the Minister is of the opinion that the parties may benefit from the appointment of a mediator.

Rationale

After the parties have been granted sufficient time to study the report of the fact finder and no settlement has been attained, additional mediation could be provided on a voluntary basis.

Mediation that follows fact finding could assist those sets of negotiations where the fact finder's report has significantly narrowed the range of disagreement but where the parties are themselves unable to formulate a settlement. Where the parties are very close to a settlement, mediation assistance could mean the difference between arriving at a voluntary settlement or having one imposed later by arbitration.

Arbitration

AMO has previously made a series of recommendations with respect to the administration of the arbitration process in general. In brief, these include:

- a. use of non-binding forms of intervention before arbitration;
- b. a single system of arbitration administered by a single agency consistent in procedures, formation, qualifications of the arbitrator, and costs;
- c. establishment of criteria to be used by arbitrators when making awards
- d. a system of accrediting and training a core of full-time arbitrators;
- e. a system for the automatic review of arbitration awards to consider implications on public interest and public policy;
- f. recognition of a linkage between the arbitration process and the funding of public services;
- g. empowering the arbitrator to impose a term of agreement not to exceed a period of twenty-four months and, in any event, not less than one year.

While some of these recommendations have been incorporated into the model of bargaining presented here, reference should be made to AMO Report 86-12, "Compulsory and Binding Arbitration: A Proposal", for more detailed explanations.

AMO's model for arbitration under the Fire Department Act is as follows:

- (1) Where thirty days has elapsed from the day each party was given a copy of the fact finder's report and the parties have not made or renewed an agreement, as the case may be, and
 - i. the Minister has not been requested to appoint a mediator, or
 - ii. the Minister has informed the parties that he does not intend to appoint a mediator, or

- iii. a mediator has been appointed and the mediator is of the opinion that the parties proceed to final and binding arbitration,

a board of arbitration of three members shall be constituted for the purpose of making an award that is binding upon the parties and the Minister shall inform the parties that a board of arbitration is to be constituted.

Rationale

Placing arbitration as the last step in the model gives recognition to its purpose - that is, as a means of final resort when all other non-binding avenues, mandatory and voluntary, have been exhausted. This type of language would ensure that arbitration is accessed by the parties only after they have had the opportunity to proceed through non-binding intervention. Neither party would be able to access it either prematurely or unilaterally.

- (2) Each party shall appoint one member and the two members so appointed shall appoint a third member who shall be the chairman.

- (3) a. Where within thirty days from the day the Minister informed the parties that a board of arbitration is to be constituted, either party fails to appoint an able and willing member to the board of arbitration, the Minister may, upon the written request of the other party, appoint a member.

Rationale

This is similar to language found in all public sector bargaining legislation where a board of arbitration is to be constituted. The language has been presented in this fashion so that it conforms with the overall model presented.

- (4) a. Where five days has elapsed from the day the second member was appointed and the two members of the board of arbitration appointed by or on behalf of the parties have failed to agree upon a third member who is able and willing to act, the Minister may, upon written notice of such failure given to him by either of the two members or either party, appoint a third member.

- b. Notwithstanding subsection (a), the Minister shall appoint a person to serve as the third member of a board of arbitration from amongst those persons who have not been considered by the other two members of the board of arbitration.**

Rationale

Language similar to that in part (a) is standard but is presented in this form to conform with the overall model presented.

AMO believes language similar to that in part (b) is required since there is the possibility that the chairman appointed to the board of arbitration by the Minister may be an individual who was initially refused by the other two members of the board of arbitration. Under such circumstances, the impartiality of the chairman may be called into question should he or she have knowledge of which party refused him or her. Additionally, since it is important that the regulatory body preserve perceptions to both parties of the neutrality of all impasse procedures, such a development may lead one party to feel that it had been treated unfairly. As such, this could impede favourable labour relations.

-
- (5) Each party shall identify to the other and submit to a board of arbitration not more than three issues in dispute between the parties, or such other number of issues to which the parties may have mutually agreed, and a board of arbitration shall, in making an award, not render a decision on any issue not submitted to it by either party.**
 - (6) Where, on the first day of proceedings, more than three issues in dispute between the parties, or more than the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, have been submitted by a party to a board of arbitration for its consideration, the board of arbitration shall require that party to submit to it only three issues or only the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, for consideration by the board of arbitration prior to the completion of the first day of proceedings.**
 - (7) Where an issue in dispute between the parties is not submitted by a party to a board of arbitration for the**

board's consideration and the parties cannot reach an agreement on the terms of resolution of such issue, the existing provision of the agreement to which the issue refers shall prevail during the term of the agreement and where no provision exists in the collective agreement to which the issue refers, such matter shall not be included in an agreement and no board of arbitration constituted under this Part shall render an award on such matter.

Rationale

Language such as this would ensure that arbitration proceedings are not unnecessarily protracted with issues of a minor nature. Quite often arbitrators are inundated with large numbers of issues for which some have no precedent or for which no proper information exists for the arbitrator to use as a base in making an award. Under such circumstances, arbitrators refer these back to the parties for their resolution. Limiting the number of issues taken to arbitration would have the same effect. The parties would be forced to contend with minor issues by either settling them or tabling them to future rounds of bargaining. In short, the parties would be forced to re-assess and re-prioritize their proposals during times of impasse.

As well, arbitration may be the process to which the parties constantly resort if the process has some appeal. For example, where one party intends to drop a proposal from its bargaining agenda, the party may leave it as an item in dispute, believing that an arbitrator may include it in the final award. Where the number of issues is limited, such circumstances could be diffused and the bargaining process made more meaningful.

Finally, where arbitration is the final step and the parties believe that an arbitrator may split the difference on a majority of issues, the parties could become frozen to their positions and refuse to engage in compromise activity. Under these circumstances, the non-binding intervenor, armed only with the power of persuasion to effect a settlement, is likely to be less effective. Limiting the number of issues would ensure that the parties make the best possible use of the non-binding intervention.

-
- (8) (1) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the

board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,

- a. the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,
- b. general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,
- c. the interest and welfare of the public,
- d. the terms and conditions of employment in other municipalities,
- e. the needs of the council of the municipality for qualified employees,
- f. the terms and conditions of employment in other occupations in the public and private sectors as the board of arbitration may consider relevant, and,
- g. the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of services rendered.

(2) Notwithstanding subsection (1), in the conduct of proceedings before a board of arbitration a party shall not submit into evidence the report of a fact finder and in rendering a decision a board of arbitration shall not consider the report of a fact finder.

Rationale

AMO has long since advocated the establishment of criteria to be used by arbitrators. As in its previous reports on this subject (see AMO Report 86-2, "Compulsory and Binding Arbitration: A Proposal"), AMO wishes to re-state that use of criteria ensures that the arbitrator has taken into account public interest, public policy, local economic conditions and local employment conditions. Criteria for arbitrators to

consider can be found in the Crown Employees' Collective Bargaining Act. Additionally, well-reasoned awards would go far to developing public acceptance of the terms of the award and to educate the parties should similar issues be the subject of bargaining in the future.

As well, AMO believes that an arbitrator should not consider the report of a fact finder in making a decision since this report is intended solely as an instrument to facilitate bargaining between the parties. As such, its introduction, and particularly the recommendations of a fact finder, could reduce either party's ability to convince the arbitrator of the merits of a particular position. However, the wording above does not preclude either party from using selected parts of the fact finder's report to develop its own case for presentation.

-
- (9) The Minister shall maintain a current list of qualified persons who may serve as a third member on a board of arbitration and from which the two members appointed to a board of arbitration by or on behalf of the parties may select.**

Rationale

This is the practice of many of the regulatory bodies overseeing bargaining legislation in Ontario. A large pool of qualified, properly trained and accredited arbitrators would reduce the probability that an arbitrator is unacceptable and require the Minister to make an appointment. AMO believes that training of arbitrators is essential if the process is to be used fairly and consistently across all situations of arbitration.

-
- (10) a. The Minister shall maintain a schedule of fees specifying the fee that those persons duly appointed to a board of arbitration as a third member may charge.**
- b. Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third member equally.**

Rationale

Many municipalities have expressed their concern to the Ministry of the Solicitor General over the inconsistency in costs charged to both parties

by arbitrators. At present, it is not uncommon for different arbitrators to charge different amounts where proceedings have been of the same duration. AMO believes that language similar to that proposed would ensure a uniform cost of arbitration across all situations of firefighter arbitrations. High costs incurred would be dictated only by the length of proceedings and not by the arbitrator selected or appointed.

PART II: REQUIRED LEGISLATIVE AMENDMENTS FOR THE EFFECTIVE ADMINISTRATION OF FIRE SERVICES

In this section AMO has made recommendations for legislative amendments that would ensure a more effective administration and hence improvement to the delivery of fire services.

"deputy chief" means a person or persons appointed by the employer to assist in the control and administration of the fire department and to act in place of the fire chief in his absence or in case of a vacancy in the office.

Rationale

Language such as this would ensure that there is an individual or individuals in charge of operations with proper authority and responsibilities should the fire chief not be present. Additionally, in those large municipalities where fire departments operate on a shift basis, such a definition would ensure that each shift is covered with someone in charge. The cost of remuneration of the deputy fire chief would ensure that municipalities appoint only as many deputies as would be required to cover shifts.

"employer" means the council of municipality that maintains a fire department.

Rationale

This definition is included to clarify the language used in other amendments.

"full-time firefighter" means a person employed in a fire department on a full-time salaried basis and assigned primarily to fire suppression or fire prevention duties or both and includes a senior officer and an officer.

Rationale

This definition would change the current definition whereby full-time firefighters are "assigned exclusively" to fire protection and fire

prevention duties. There are other duties indirectly related to the delivery of fire services that do affect the quality of such services. Use of "assigned exclusively" unnecessarily restricts the assignment of these other duties.

Additionally, the definition above excludes "technicians" since these individuals are civilian employees whose duties are not related to either fire suppression or fire prevention.

"senior officer" means a fire chief, deputy chief, assistant deputy chief or other full-time firefighters who, in the opinion of the Minister, exercises managerial functions or is employed in a confidential capacity relating to labour relations.

Rationale:

It is important that a definition of senior officer clearly delineates management from non-management personnel in order to ensure that no conflict of interest exists when managerial authority is required. For example, in situations of discipline it would be unfair to an individual, who by virtue of responsibilities is required to impose disciplinary action, to require him or her to do so when that same individual is also part of the bargaining unit. On the one hand, the discipline imposed may be inappropriate and, on the other hand, the individual may be placed in a position of being ostracized by other members of his or her bargaining unit for carrying out the required responsibilities.

-
- (1) A full-time firefighter shall not be compelled to work during the hours off duty but may be recalled to duty where services are required in connection with a fire, flood or other emergency to which, in the opinion of the fire chief, a proper response cannot be made with the full-time firefighters on duty in a manner that is consistent with the maintenance of ongoing fire suppression in the municipality.**

Rationale:

Language such as this serves two purposes. First, it keeps in step with current collective agreements that provide call-back provisions and/or provide overtime rates for duties performed outside normal working hours. Second, use of the word "emergency" instead of "disaster" would be in keeping with the definition now found in the Ministry of the Solicitor General's Emergency Plans Act.

- (2) (a) A full-time firefighter shall not be discharged from his employment without being given at least seven days notice in writing of the proposed discharge and the reasons therefor.
- (b) A full-time firefighter who receives a notice under subsection (a) may, before the expiry of the seven days, require the employer to hold a hearing by delivering a notice in writing to that effect to the clerk of the municipality and the discharge shall not take effect before the employer holds the hearing and gives its final decision.
- (c) Where a full-time firefighter elects to require a hearing under subsection (b), any grievance or arbitration procedure established by a collective agreement or this Act does apply.

Rationale:

Given that existing collective agreements do provide firefighters with an avenue of appeal for discharge through a grievance procedure and that the Act also provides an avenue of appeal, the current Act implies that a firefighter can make an appeal twice.

AMO feels that this was not the original intent of creating a statutory mechanism of appeal. Rather, it is likely that the statutory provisions were established to provide a mechanism where none existed or to give firefighters an option. Subsection (c) would rectify the current state of the Act.

-
- (3) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine.
- (a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions, and,
- (b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal,

and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of a board of arbitration.

Rationale

It is not uncommon for public sector collective bargaining legislation to restrict the matters that can be negotiated in order to preserve certain rights of management since the manner in which the employer carries out its administrative function can have a direct and wide-scale impact on the interests and welfare of the public. A similar clause to the one proposed above can be found in the Crown Employees Collective Bargaining Act.

APPENDIX A

A BRIEF OUTLINE OF COMMON ELEMENTS FOUND IN BARGAINING LEGISLATION IN ONTARIO

Figure 1 shows a general framework for bargaining, and Figures 2 to 6 show the bargaining framework of five Ontario acts:

1. the Ontario Labour Relations Act,
2. the Crown Employees Collective Bargaining Act,
3. the Hospital Labour Disputes Arbitration Act,
4. the School Boards and Teachers Collective Negotiations Act,
and
5. the Police Act.

For comparison, Figure 7 shows the framework for the Fire Departments Act and Figure 8 shows AMO's proposed model of collective bargaining for the Fire Departments Act.

AMO notes that there are common elements to these Acts.

First, each of the first five Acts has at least one provision for the use of a non-binding form of intervention. This appears to be in keeping with the view that once an impasse has been reached, the parties need assistance at re-directing their communications efforts and to diffuse any emotions heightened by bargaining to this point. Since these interventions are of a non-binding nature, any settlement reached will still be a compromise between the parties and therefore acceptable. The School Boards and Teachers Collective Negotiations Act takes this one step further with the imposition of fact finding, premised on the belief that assistance in the form of neutral information can aid the parties to confirm, re-assess or justify positions taken.

A second common element is found in the first four Acts. In these Acts, there is at least one form of non-binding intervention that is "mandatory". Making the process mandatory has merit since the parties should be given the opportunity to re-focus their efforts toward the issues and away from emotional build-up that may have resulted from reaching an impasse and that could lead them to taking drastic and costly measures. The conventional wisdom is that a mandatory non-binding process can effectively serve as a "cooling-off" period and permit the parties to then continue on to making a compromise settle-

ment. In the first four Acts, a party is not permitted to unilaterally access the last step of intervention in the bargaining process. Only with mutual agreement and/or when certain conditions have been met can such interventions be used. In effect, the process temporarily diffuses the premature use of costly threat tactics.

A third common element to the first four Acts is granting the parties the option for additional "voluntary" non-binding intervention. On the one hand, building several non-binding impasses procedures into the model permits the parties with every opportunity to make a compromise settlement before a binding award is imposed or sanctions permitted. On the other hand, such models give recognition to the fact that arbitration and sanctions are interventions of a last resort, to be used only when all other avenues have been exhausted.

Finally, the Acts share the requirement that the regulatory body governing the Act play a role in providing third party neutrals, neutral information where possible, and advice. As well, the first four Acts grant the regulatory body with the authority to impose non-binding procedures where it is of the opinion that such intervention may be beneficial to the parties.

Figure 1

A GENERAL FRAMEWORK OF COLLECTIVE BARGAINING LEGISLATION

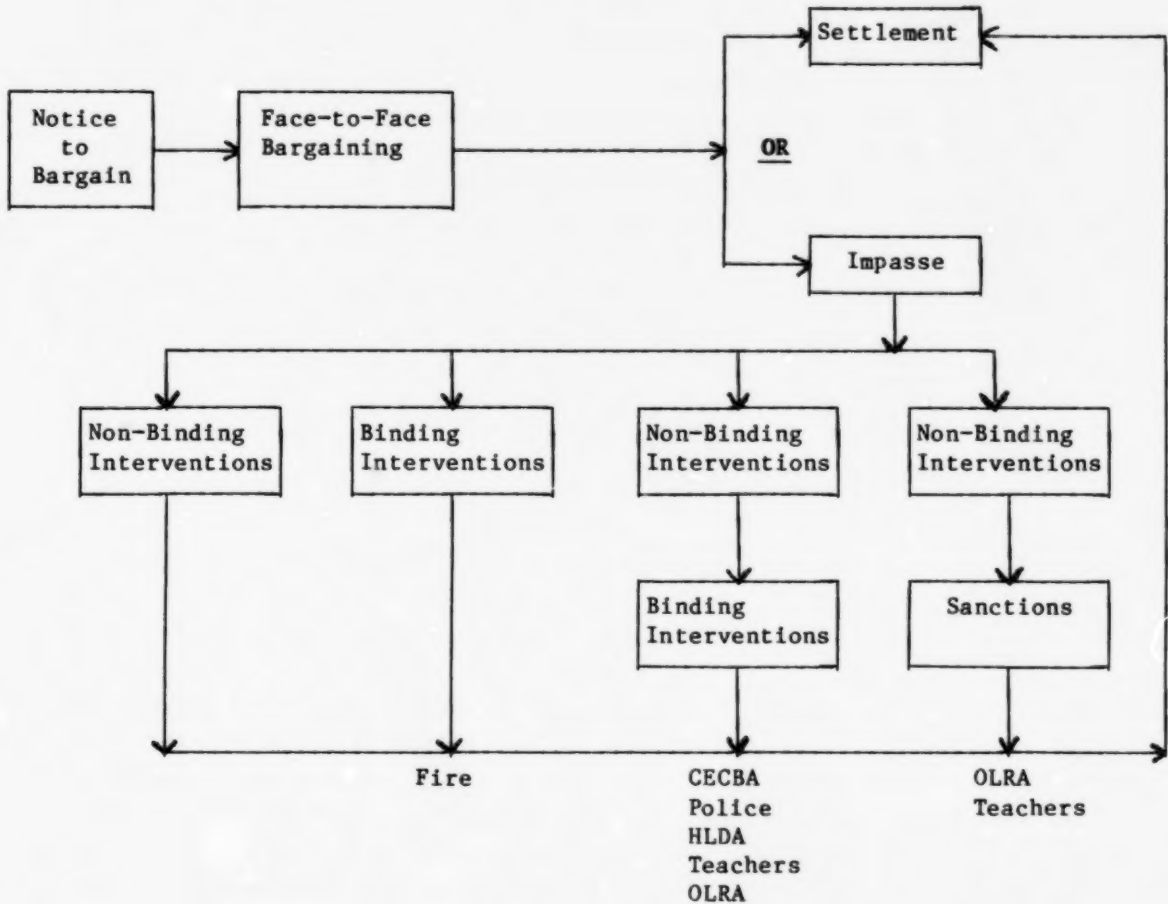


Figure 2

THE ONTARIO LABOUR RELATIONS ACT (OLRA)

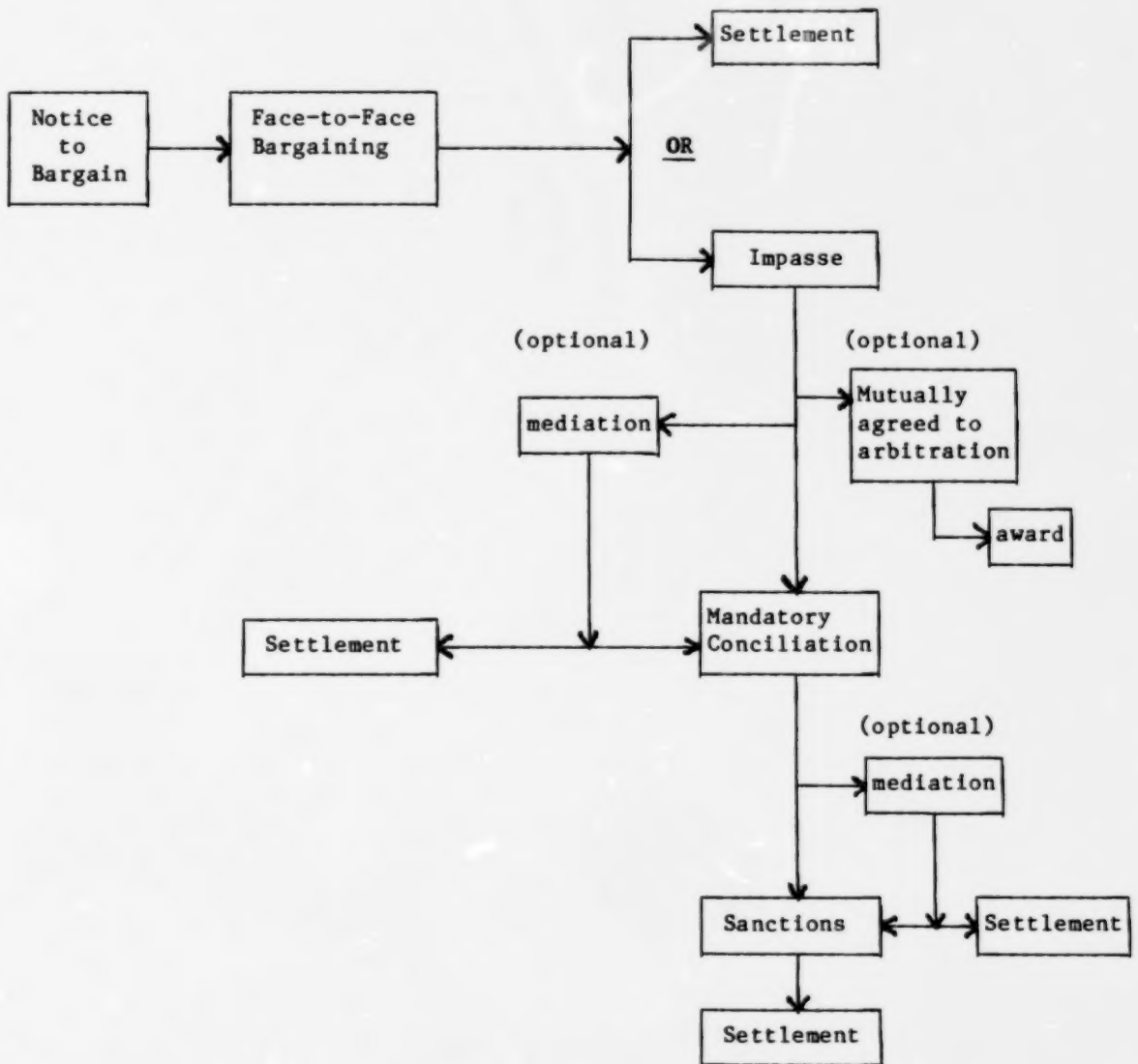


Figure 3

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT (CECBA)

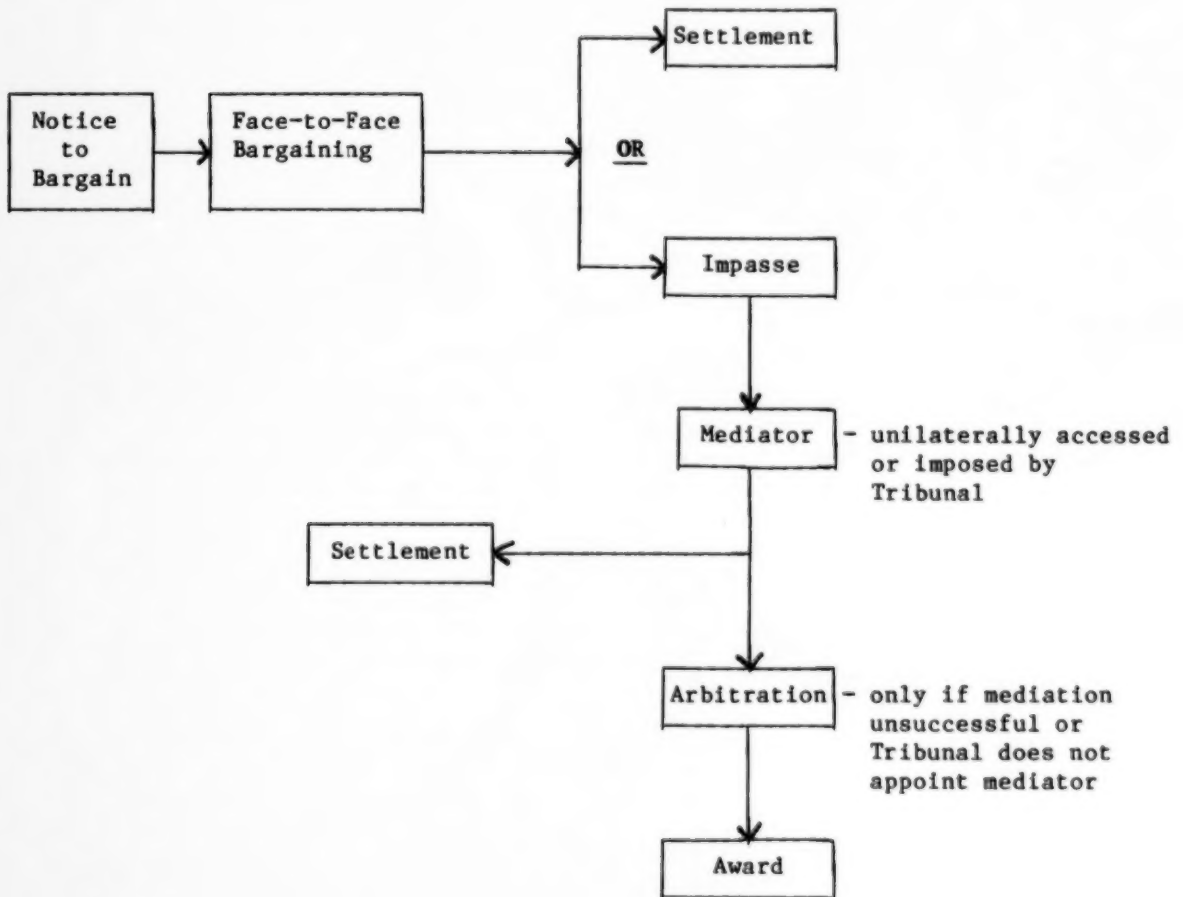


Figure 4

*** HOSPITAL LABOUR DISPUTES ARBITRATION ACT (HLDA)**

*linked to OLRA

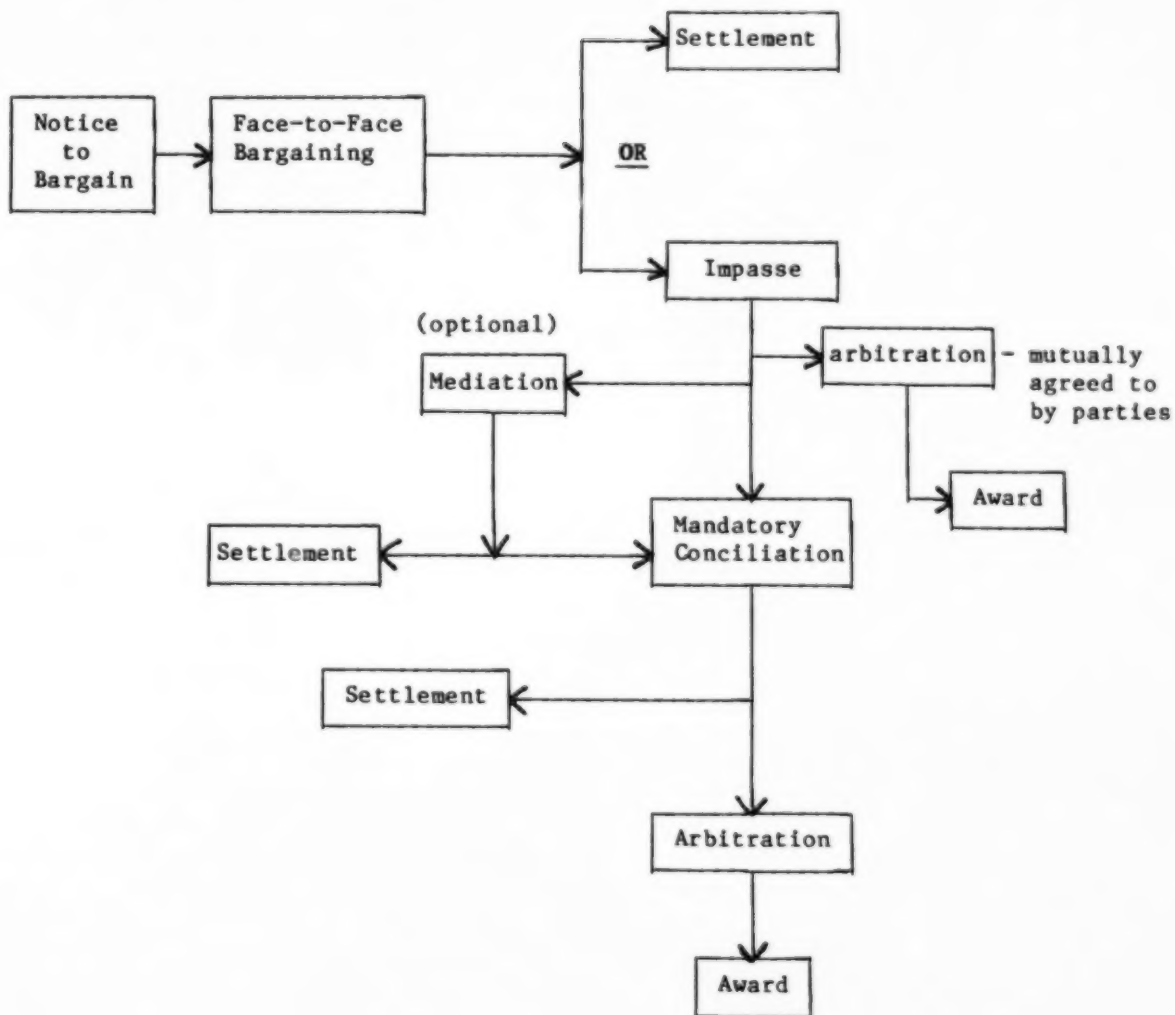


Figure 5

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

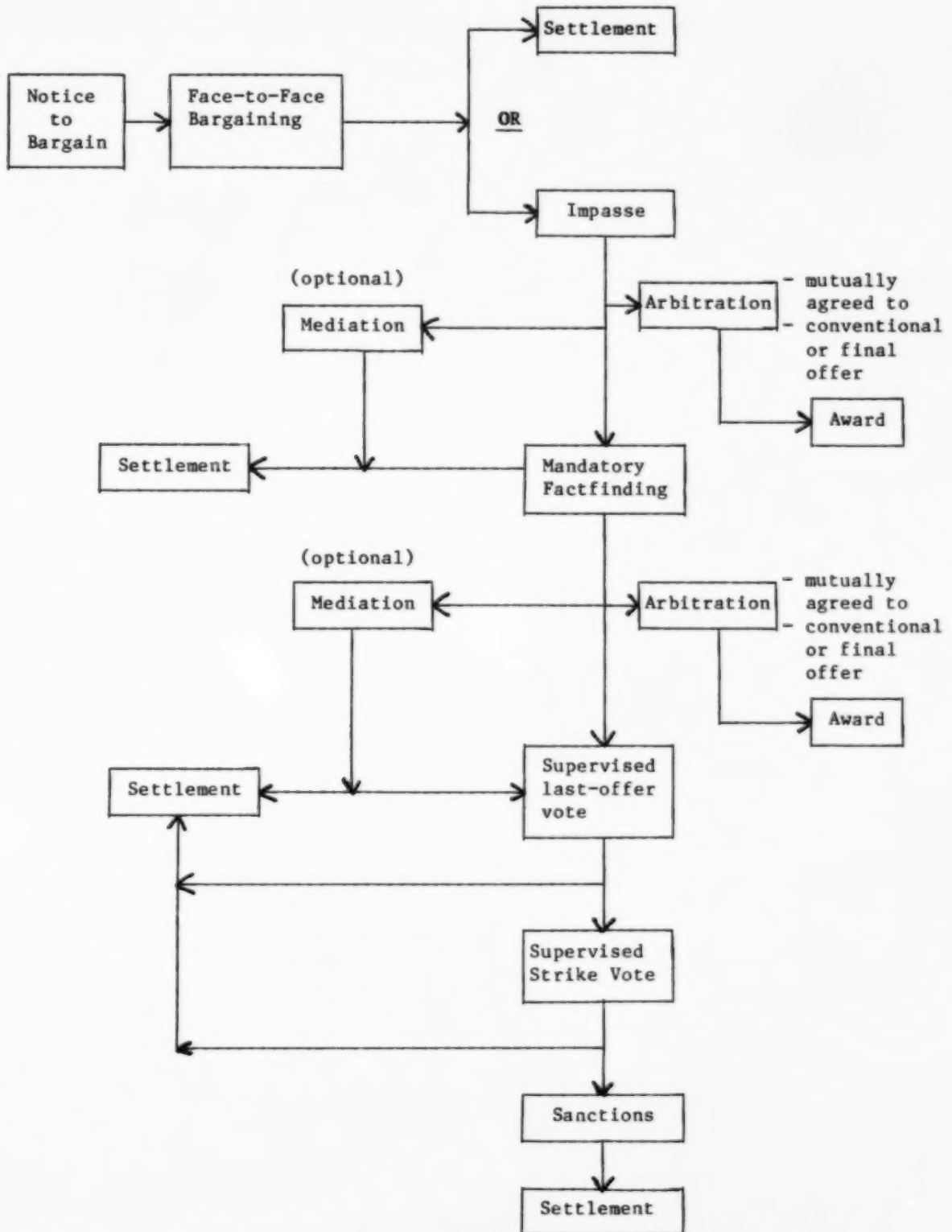


Figure 6

THE POLICE ACT

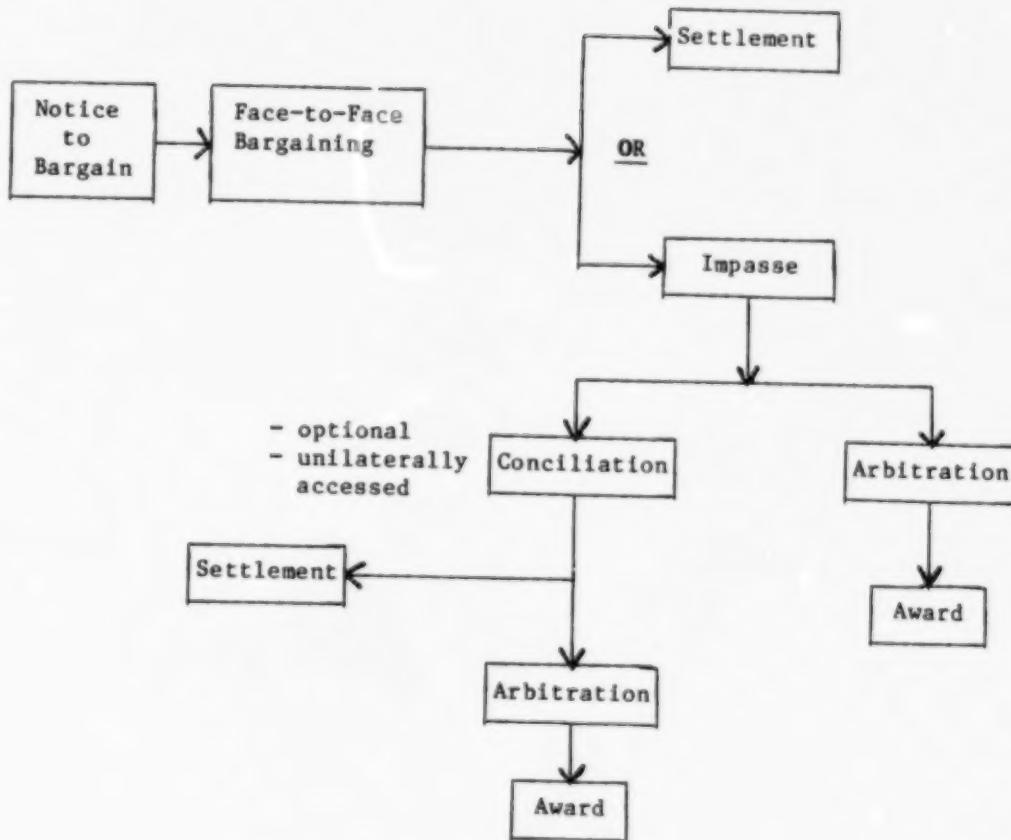


Figure 7

THE FIRE DEPARTMENTS ACT

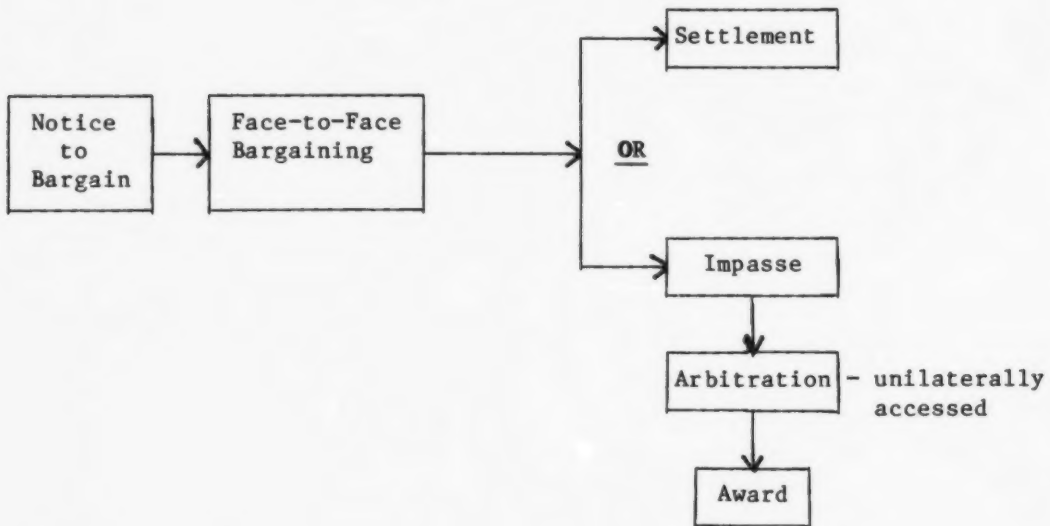
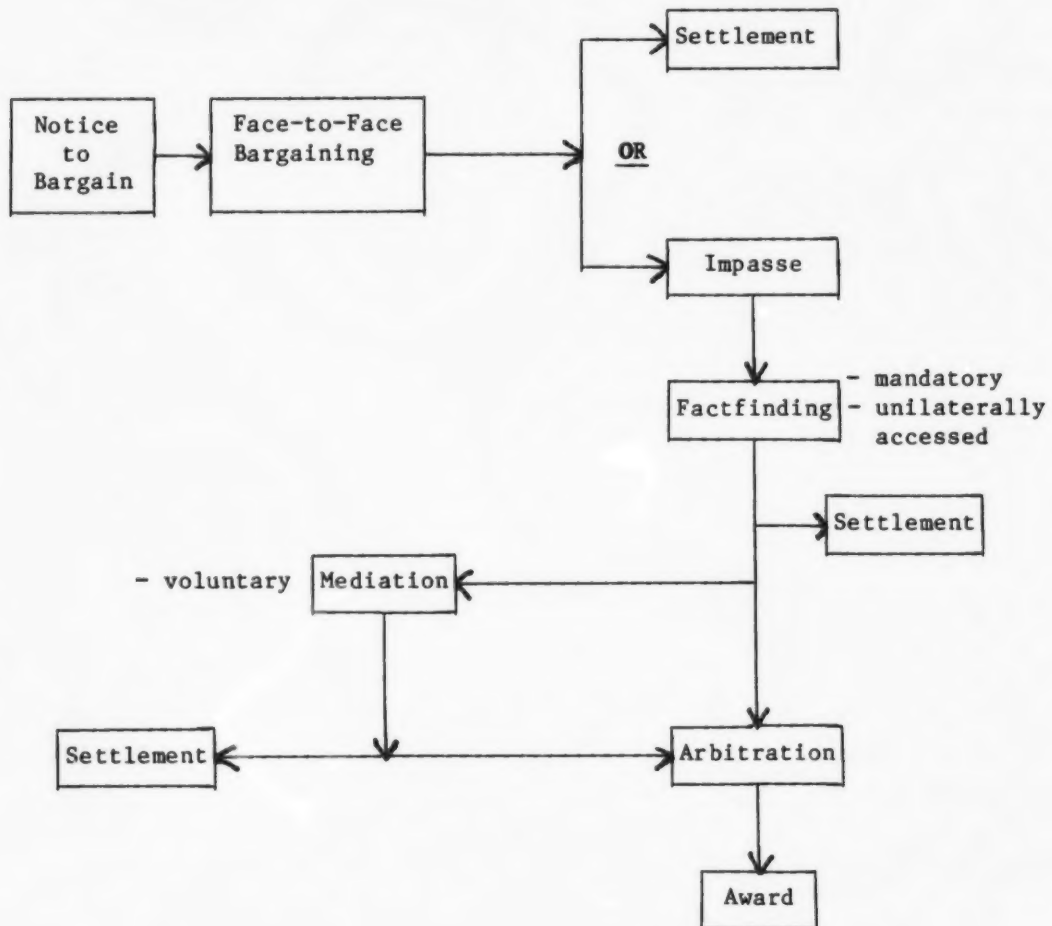


Figure 8

**AMO PROPOSED MODEL OF COLLECTIVE BARGAINING
UNDER THE FIRE DEPARTMENTS ACT**



APPENDIX B

Experience with Fact Finding by the Ontario Education Relations Commission

Between 1981 and 1985, the Commission had the following experience with the factfinding process:

	1984/85	1982/83	1981/82
incidents of negotiations	227 (100.0%)	173 (100.0%)	168 (100.0%)
fact finding appointments	130 (57.3%)	62 (35.8%)	50 (29.8%)
settled before report issued	22 (18.3%)	10 (16.1%)	13 (26.0%)
settled before additional mediation	50 (38.5%)	37 (59.7%)	12 (24.0%)
settled after additional mediation	52 (43.3%)	14 (22.6%)	17 (34.0%)
settled after strike	6 (5.0%)	1 (1.6%)	* 8 (16.0%)

* includes 5 settled through voluntary arbitration

A summary of six years worth of experience from 1977-78 to 1982-83 covering 907 sets of negotiations showed the following:

907	agreements negotiated
439 (48.4%)	settled without third party
468 (51.6%)	settled with third party
Of the 468 that used a third party to settle:	
74 (15.8%)	settled with mediation only
165 (32.2%)	settled with fact finding
131 (30.0%)	settled with fact finding followed by mediation
98 (20.9%)	settled with another combination of fact finding and mediation or using sanctions or using arbitration

PUBLICATIONS ISSUED IN THE "AMO REPORT" SERIES

- 85-1 Response to Draft Regulation 309: Standards for Municipal Landfill Sites
- 85-2 AMO Response to "One-Stop Service: A joint provincial-municipal report on projects to test a proposed new method of delivering income maintenance benefits together with new supports for those seeking employment"
- 85-3 Municipal Infrastructure in Ontario: Funding Inadequacies
- 85-4 Report of The AMO Joint Committee on Sewer and Water Services
- 85-5 Report on the Dog Licensing and Livestock and Poultry Protection Act
- 85-6 AMO Response to CMHC Proposed Changes to the Residential Rehabilitation Assistance Program
- 85-7 Intervenor Funding and Cost Awards by Provincial Hearing Bodies

- 86-1 Response to the Ministry of Housing's 1985 Non-Profit Housing Proposal
- 86-2 Compulsory & Binding Arbitration: A Proposal (1984 edition)
- 86-3 Response to the Report Taxing Matters: An Assessment of the Practice of Property Taxation in Ontario (\$10.00)
- 86-4 Response to Ministry of Housing's Guidelines for the Redistribution of Funds under the Ontario Home Renewal Program
- 86-5 Report on Amendments to the Planning Act, 1983
Addendum to AMO Report 86-5
- 86-6 AMO Submission to Provincial Premier and Executive Council of Ontario
- 86-7 Response to the Provincial Government Discussion Paper on "Pay Equity"
- 86-8 Response to the Preliminary Report of the Advisory Committee on Municipal Liability Insurance
- 86-9 Response to the Report of the Commission on the Financing of Elementary and Secondary Education in Ontario
- 86-10 Housing Rehabilitation in Ontario
- 86-11 Response to the Foodland Preservation Policy Statement (\$10.00)
- 86-12 Funding Income Maintenance in Ontario: Administration Costs
- 86-13 Report on Deinstitutionalization (\$10.00)
- 86-14 Response to the Provincial Government's White Paper, "Municipal Industrial Strategy for Abatement (MISA)"
- 86-15 Response to "Issues and Options: An Interim Report on Municipal Elections in Ontario" (\$10.00)
- 86-16 Response to the Ontario Right to Farm Advisory Committee's Report

- 87-1 A Proposed Model of Collective Bargaining and Required Amendments for the Fire Departments Act (\$10.00)
- 87-2 Response to the Final Report of the Advisory Committee to the Minister of Municipal Affairs on Municipal Liability Insurance in Ontario
- 87-3 Response to the 1986 Draft on Flood Plain Planning Policy Statement
- 87-4 Response to the Rental Housing Protection Act
- 87-5 The Future of Social Assistance in Ontario - Report to the Social Assistance Review Committee (\$10.00)

Copies of all the reports in this series are available at \$5.00 each, (except as noted) for postage and handling, pre-paid, from: Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario, M5J 1V6. Please make cheques payable to the Association of Municipalities of Ontario.

For a list of AMO reports prior to 1985, please contact the AMO office.